SINGAPORE REPORTS

Huang Han Chao v Leong Fook Meng & Anor

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 47 OF 1987
YONG PUNG HOW CJ, CHAN SEK KEONG AND KARTHIGESU JJ
9 SEPTEMBER 1991

Civil Procedure — Pleadings — New claim raised at hearing of appeal — Statement of claim must specify relief claimed — Claim on appeal must not be inconsistent with specific relief sought in pleadings — 'Further or other relief' not to be used to introduce relief inconsistent with specific relief claimed — Rules of the Supreme Court 1970, O 6 r 2(1)(a) & O 18 r 15(1)

Civil Procedure — Appeal — New claim raised at hearing of appeal — Claim on appeal must not be inconsistent with specific relief sought in pleadings — 'Further or other relief' not to be used to introduce relief inconsistent with specific relief claimed — Rules of the Supreme Court 1970, O 6 r 2(1)(a) & O 18 r 15(1)

Civil Procedure — Appeal — Discretion of appellate court to rehear case and hear a point not taken at trial — New claim raised at hearing of appeal — Original petition of appeal did not contain new ground of appeal — New claim not argued in court below — Discretion not to be exercised in appellant's favour where new ground of appeal is inconsistent with case argued in court below — Supreme Court of Judicature Act (Cap 322, 1985 Ed), s 37(1) — Rules of the Supreme Court 1970, O 57 r 3(1)

Words and Phrases — 'Further or other relief'

This appeal concerns a dispute over the ownership of a piece of property ('the Bukit Tunggal property'). The appellant and second respondent were partners of two partnership firms. The Bukit Tunggal property was conveyed to the first respondent, who is the wife of the second respondent, in October 1967. When the second respondent moved permanently to Singapore from Kuala Lumpur, he arranged for the Singapore office of one of his firms to rent the property from his wife for use as his residence and office for three years.

The partnership was later dissolved. In 1979, the appellant started this action by a writ of summons in which he claimed a declaration that the respondents held half of the beneficial interest in the property on trust for him and other consequential relief. The writ was later amended to a claim for a declaration that the property was entirely held on trust for him by the respondents. In his statement of claim, the appellant alleged that the Bukit Tunggal property was purchased for him by the second respondent on his instructions.

At the trial, the appellant maintained that the property was purchased on his instructions and with funds from his credit balance in the partnership account and there was no tenancy agreement. At the very end of the trial, however, as a fall back position, the appellant claimed that the property was partnership property. The claim was dismissed, and the appellant filed a petition of appeal which stated various grounds of appeal. All these grounds were abandoned on appeal and counsel elected to rely only on one ground, ie that the appellant was entitled to at least a half share of the property as he was a partner and the property was purchased mainly out of funds belonging to the partnership firm. The issue was whether the appellant was procedurally barred from raising that ground on appeal.

Held, dismissing the appeal:

(1) The Rules of the Supreme Court 1970, under O 18 r 15(1), require that a plaintiff specifies at least one of the reliefs he may wish to claim. A plaintiff cannot ask for a claim that is inconsistent with the specific relief he has sought in his pleadings. Here the appellant has specified in his amended writ, original and amended statement of claim that he claims a declaration that the entire property is held on trust for him. It is therefore plainly inconsistent for the appellant in this appeal to seek a declaration that the property is partnership property when his pleadings expressly asserted that the entire property was purchased on his instructions and with his funds and that it was accordingly his beneficially.

(2) The standard prayer for 'further or other relief' must be read with and limited by the facts alleged and the terms of the prayer for specific relief. It cannot be used to introduce relief inconsistent with that which was expressly asked for.

(3) The appellant may have amended his pleadings at the trial to claim the property as partnership property but he did not do so and it was too late for him to do so at the hearing of the appeal. The trial was conducted below wholly with the aim of proving the allegations in his amended statement of claim and it was only at the end of the hearing that his counsel sought the declaration that the property was partnership property.

(4) The original petition of appeal did not contain the new ground relied on on appeal; it was added only on amendment. The only reason given to the judge hearing the motion for leave to amend was that the appellant had instructed new solicitors. The grant of leave to amend the petition could not therefore be taken in support for any argument for leave to amend before this court.

(5) The discretionary power of the Court of Appeal under s 37(1) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) and O 57 r 3(1) of the Rules of the Supreme Court 1970, to rehear a case and hear a point not taken at trial should not be exercised in an appellant's favour where the appeal is based on a case which is totally inconsistent with and contradictory to the case argued in the court below.

Cases referred to

1 *Cargill* v *Bower* (1878) 38 LT 779 (folld)
2 *Belmont Finance Corp Ltd* v *Williams Furniture Ltd & Ors* [1979] Ch 250 (folld)
3 *Mokhtar* v *Arumugan* [1959] MLJ 232 (folld)
4 *Ex p Reddish, In re Walton* (1877) 5 Ch D 882 (folld)

Legislation referred to

Supreme Court of Judicature Act (Cap 322, 1985 Ed) s 37(1)
Rules of the Supreme Court 1970 O 6 r 2(1)(a), O 18 r 15(1), O 57 r 3(1)

Anamah Tan (*Catherine Lim* with her) for the appellant.
Robert Hsieh for the respondents.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): This matter concerns a dispute over the ownership of a piece of property known as No 24 Bukit Tunggal Road, Singapore ('the Bukit Tunggal prop-

erty'). At the hearing before this court on 21 August 1991, we dismissed the appeal after hearing both counsel and we now give our reasons.

The Bukit Tunggal property was conveyed to the first respondent in October 1967. The second respondent, who is the husband of the first respondent, was subsequently registered as a co-owner. In June 1967, the second respondent was the sole partner in the engineering firm of Thomas Anderson and Partners in Kuala Lumpur. In July of that year, he set up a Singapore office of that firm. The Singapore office was a partnership between him and the appellant. There is a dispute as to whether the appellant was also a partner in the Kuala Lumpur office of Thomas Anderson and Partners as from July 1967 but on the view we take of this matter it is unnecessary for us to resolve the question. The second respondent and the appellant were also involved in another engineering firm under the style of Dr HC Huang Dan Rakan-Rakan between July 1967 and November 1970. This firm had offices in Singapore and Kuala Lumpur. The term 'partnership' in the remainder of this judgment refers to the partnership between the second respondent and the appellant in the Singapore office of Thomas Anderson and Partners and in Dr HC Huang Dan Rakan-Rakan. The arrangement between the partners was for the second respondent to be responsible for the Singapore offices while the appellant was in charge of the Kuala Lumpur office.

The second respondent moved from Kuala Lumpur to Singapore on a permanent basis after the purchase of the Bukit Tunggal property. He arranged for the Singapore office of Thomas Anderson and Partners to rent the property from his wife for use as his residence and office for a period of three years. The rental received by her from this tenancy was employed by the first respondent to pay off part of the mortgage loan that she had taken to pay part of the purchase price of the property. The arrangement was for the office to pay the rent directly to the mortgagees. The respondents continued to live in the property after the dissolution of the partnership in 1970 and they paid off the remainder of the mortgage loan. The remainder of the purchase price was paid by means of an overdraft drawn on a partnership bank account. The sum overdrawn was said to have been debited to the second respondent's current account in the partnership's books.

After the dissolution of the partnership, the appellant's then solicitors, a firm we shall refer to as firm A, wrote in December 1970 to the second respondent regarding the dissolution of the partnership. In the letter, no reference was made to the Bukit Tunggal property. Subsequently, however, in a letter dated 15 February 1975, firm A informed the second respondent's then solicitors that the appellant was claiming that the property was a partnership asset. In 1976, a receiver was, on an application by the second respondent, appointed to wind up the partnership but the receiver took no steps to claim that the Bukit Tunggal property was a partnership asset. We digress to note that as at the date of the hearing before us, the draft accounts prepared by the receiver have yet to be agreed to by the appellant. The instant action was started by a writ of summons dated 6 October 1979 in which the appellant claimed a declaration that the respondents held half of the beneficial interest in the property on trust for him and other consequential relief. By this time, the appellant had decided to change solicitors and after approaching a well known advocate and solicitor who declined to deal with this matter, the appellant engaged firm B and the writ was filed on his behalf by them. The writ was then amended by firm B on the appellant's instructions on 4 December 1979, as he insisted that they had misunderstood his previous instructions as to the extent of his interest in the property, to a claim for a declaration that the property was entirely held on trust for him by the respondents. On 6 December 1979, the appellant successfully applied for a lis pendens order against the Bukit Tunggal property. In his affidavit filed on 3 December 1979 in support of his application for the lis pendens order, the appellant stated that the property was entirely his.

The appellant then changed solicitors again and this firm, firm C, filed his statement of claim on 9 October 1980. This pleaded that the Bukit Tunggal property was purchased for the appellant by the second respondent on his (the appellant's) instructions. The statement of claim further pleaded that the deposit for the purchase was paid with funds credited by the appellant to the partnership account for that purpose. The appellant alleged that the overdraft and the mortgage loan used to pay the balance of the purchase price were taken out on his instructions. It was alleged that the overdraft was debited to the appellant's current account with the partnership. The appellant alleged that, although the mortgage loan document named the first respondent as borrower and mortgagor and the second respondent as surety for the loan, the monthly instalments were paid off by monthly drawings on his credit balance with the partnership account until the partnership was dissolved. The respondents were alleged to have paid off the remaining instalments without the respondent's consent. The appellant further pleaded that it was not until August 1969 that he knew that the property was in the name of the first respondent and that he then demanded that it be transferred to him but the respondents refused. The statement of claim then prayed for a declaration that the Bukit Tunggal property was held on trust for him and for other consequential relief.

Sometime in early 1981, the appellant changed solicitors yet again. Through his new solicitors, firm D, the appellant answered interrogatories and in his answer filed on 7 July 1981, asserted that the property belonged to him and was not a partnership asset. Firm D amended the appellant's statement of claim on 5 December 1983 but the pleadings and prayers stated above were not amended.

The trial was held before Chua J over several periods between October 1984 and October 1986. Some time before August 1985, the appellant changed solicitors to firm E and they continued the proceedings to the end of the trial. Throughout the trial the appellant maintained, in his evidence and through counsel, that the property was purchased on his instructions and with funds from his credit balance in the partnership account. He also alleged that there was no tenancy agreement between the Singapore office of Thomas Anderson and Partners and that the respondents were staying on the property only with his permission and free of rent. He asserted that when he discovered that the property was registered in the name of the first respondent, he demanded its transfer to him and the second respondent's refusal to procure its transfer was the cause of the dissolution of the partnership. He explained that the claims in the letter dated 15 February 1975 and in the original writ of summons that the Bukit Tunggal property was a partnership asset were errors on the part of his solicitors. It was only at the very end of the trial, as the then counsel was making his final submission, that the appellant through counsel resurrected, as a fall back position, the claim that the property was partnership property. The learned judge dismissed the appellant's claim by a reserved judgment dated 29 April 1987.

In dismissing the appellant's claim, Chua J found that there had been no instructions from the appellant to the second respondent to purchase the Bukit Tunggal property. The learned trial judge further found that the appellant had failed to give any evidence showing that the financial arrangements for the payment of the purchase price of the property were made on his behalf or that he had paid for any of the purchase price. The learned judge found that the property was purchased by a combination of the first and second respondents' funds. He held that there was a genuine tenancy between the partnership and the first respondent and that the respondents were not residing rent free on the property as the appellant had alleged. The learned judge also held that the appellant knew that the Bukit Tunggal property had been conveyed into the name of the first respondent before August 1969 and that the dissolution of the partnership had nothing to do with the dispute over the Bukit Tunggal property. He rejected the appellant's explanation that the claims in the letter dated 15 February 1975 and in the original writ of summons that the property was partnership property were errors on the part of his solicitors.

The appellant being dissatisfied with the decision of the learned trial judge appealed to this court. He had by then ceased to instruct firm E and had to file the petition of appeal on his own. This petition was understandably in a form that was unsuitable for the hearing of the appeal and was amended, on 17 October 1989, by yet another firm of solicitors, firm F, who acted for the appellant at the hearing before this court. The grounds of appeal as set out in para 3(a) to (f) of the amended petition recited that the learned judge: (1) erred in deciding that there was no evidence to support the appellant's claim that he instructed the second respondent to purchase the property on his behalf; (2) erred in failing to consider the fact that the second respondent was never at the material time financially in a sound position to be able to purchase the property; (3) failed to consider the implications of the fact that the appellant was the more important of the two partners as regards the professional services that the partnership could offer; and (4) erred in giving credence to the evidence of the respondents despite the fact that their evidence was riddled with contradictions on several matters. All these grounds were abandoned on appeal by counsel for the appellant. Instead, she elected to proceed only on ground (g). Paragraph 3(g) stated as follows:

> the learned judge having ruled that there was no evidence to support the appellant's claim that he instructed the second defendant to purchase the property known as No 24 Bukit Tunggal Road on his [the appellant's] behalf, erred in law and in fact in not taking into account the fact, that as the property was purchased mainly out of the funds belonging to the partnership firms of Dr HC Huang Dan Rakan-Rakan and Thomas Anderson & Partners, the appellant as a partner of the said firm was entitled to at least a half share of the property.

In the course of the hearing, we expressed concern that the appellant was procedurally barred from raising ground (g). Despite the appellant's counsel's efforts to persuade us that there was no bar or, alternatively, to allow an amendment to the pleadings, we were unable to agree with counsel. The procedural bar in this case arises in two ways. The first is the manner in which this case has been pleaded by the appellant. Order 6 r 2(1)(a) of the Rules of the Supreme Court 1970 requires that a writ be at least endorsed with a concise statement of the nature of the claim made or the relief or remedy required in the action it begins. Then O 18 r 15(1) provides that the statement of claim must state specifically the relief or remedy claimed. The Rules therefore require that a plaintiff specifies at least one of the reliefs he may wish to claim. Here, the appellant has specified

in his amended writ, original and amended statement of claim, which have been drafted by different solicitors, that he claims a declaration that the *entire* property is held on trust for him. He has also claimed consequential relief but this stands or falls with the claim for the declaration. We are of the view that a plaintiff cannot ask for a claim that is inconsistent with the specific relief he has sought in his pleadings: see the decision of Fry J in *Cargill* v *Bower*[1] which the English Court of Appeal has approved in *Belmont Finance Corp Ltd* v *Williams Furniture Ltd & Ors*,[2] and which the Court of Appeal of the Federation of Malaya applied in *Mokhtar* v *Arumugam*.[3] Furthermore, the standard prayer for 'further or other relief' must be read with and limited by the facts alleged and the terms of the prayer for specific relief. It cannot be used to introduce relief inconsistent with that which was expressly asked for. In this action, it is plainly inconsistent for the appellant to seek a declaration that the property is partnership property when his pleadings expressly asserted that the entire property was purchased on his instructions and with his funds and that the property was accordingly his beneficially.

It may have been possible for the appellant to have amended his pleadings at the trial to claim the property as partnership property but he did not seek to do so and it was too late in the day for him to do so at the hearing of the appeal. We are fortified in our view by the manner the appellant has gone about his claim in relation to this property. His original wit of summons claimed only that the property was partnership property. He then amended the writ to its present form. He made statements on oath, both before and at the trial, that the property belonged entirely to him. The case was conducted below wholly with the aim of proving the allegations in his amended statement of claim and claiming for the entire beneficial interest. It was only at the very end of the appellant's counsel's submissions at the end of the hearing that the appellant (through counsel) sought the declaration that the property was partnership property. Moreover, the original petition of appeal did not contain ground (g) or any similar ground. The ground was added only on amendment. We are conscious that the amendment was made with the leave of court but we observe that the only reason given to the judge hearing the motion for leave was that the appellant had instructed new solicitors. The grant of leave to amend the petition could not therefore be, and rightly was not, taken in support of any argument for leave to amend before this court.

The second reason why this appeal must be dismissed is that the claim that the property is partnership property was, as stated before, never argued below, save as a final submission at the very end of the trial, nor was there any evidence presented with a view to showing that it was partnership property. It is true, as counsel for the appellant urged, that this court, by virtue of s 37(1) of the Supreme Court of Judicature Act (Cap 322, 1985 Ed) and O 57 r 3(1) of the Rules of the Supreme Court 1970, rehears a case and that it can hear a point not taken at the trial. The latter is, however, clearly a discretionary power. We are of the opinion that it should not be exercised in an appellant's favour where the appeal is based on a case which is totally inconsistent with and contradictory to the case argued in the court below. In this respect, we adopt the view of the English Court of Appeal in *Ex p Reddish, In re Walton*.[4] The facts of that case that are material for present purposes are that the trustee in bankruptcy of a debtor sued the debtor's bank to have a payment made by the debtor to the bank set aside on the ground that it was a fraudulent preference. That action failed at trial in the bankruptcy court before a single judge. On appeal, counsel for the liquidator argued that the payment was a fraudulent preference or, *alternatively*, it was made in reliance on a fraudulent misrepresentation by the bank's manager. The English Court of Appeal held that the alternative claim could not be entertained despite any misgivings their Lordships might have had regarding the propriety of the payments to the bank. This was because the alternative claim was inconsistent with the original claim in that it negatived the allegation of a fraudulent preference and it had not been raised at the trial. In the present case, the plea that the Bukit Tunggal property is partnership property is at odds with the claim that it belongs entirely to the appellant. The factual considerations are different and the matters to which the learned trial judge had to address his mind were different. Moreover, the appellant has expressly denied at the trial that the Bukit Tunggal property was in any way partnership property. In a sense, this appeal is more inconsistent with the case below than the appeal in *Ex p Reddish*.[4] In that case, the end the trustee sought was to set aside the payment to the bank and he sought to use different legal concepts at trial and on appeal to achieve that end. The appellant in this case is seeking a result that is totally at variance with the result he sought at trial. These considerations make the present case one in which the principle stated in *Ex p Reddish*[4] should clearly be applied.

For the reasons stated, the appeal in this case was dismissed with costs.

Appeal dismissed.

Solicitors: *Ann Tan & Associates*; *Boswell Hsieh & Lim.*

Reported by *Zarinah Marican*